



## IMPORTANT STATEWIDE INSTRUCTIONS FOR WORK-RELATED ILLNESSES OR INJURIES OCCURRING BETWEEN APRIL 1, 2000 AND JULY 31, 2002

**TO: ALL PERSONNEL ADMINISTRATORS, RISK MANAGERS, AND PAYROLL/BENEFIT ADMINISTRATORS**

**(NOTE: *DHR WILL WORK WITH EACH DEPARTMENT'S HR DIRECTOR AS THE PRIMARY POINT OF CONTACT TO IMPLEMENT THE NECESSARY ACTIONS IN LIGHT OF THE FOLLOWING INFORMATION AND FOR FURTHER COMMUNICATIONS UNLESS NOTIFIED OTHERWISE.*)**

**FROM: JEFF SCHUTT, DIRECTOR, DPA DIVISION OF HUMAN RESOURCES**

The Court of Appeals issued a final decision on the Department's motion for reconsideration in the injury leave case. In light of the decision, we have decided to move forward with the restoration of injury leave for those individuals with work-related illnesses or injuries that occurred between April 1, 2000 and July 31, 2002. Guidance was already issued for work-related illness or injuries that occurred on or after August 1, 2002. **The following information addresses injuries that occurred between April 1, 2000, and July 31, 2002.**

- All records involving "lost time" claims between April 1, 2000, through July 31, 2002, should be carefully reviewed to determine affected employees. The Pinnacol web site may be used to access claims information. If you need assistance with reports, please call our Risk Management unit at 303-866-3848 or 1-800-268-8092.
- A determination should be made concerning if, or how, injury leave applies to each individual case. Several electronic forms are available to help with these calculations (one for calculating "make-whole" hours, one for

calculating money owed, and calendars for tracking and totaling leave use). After determining what should have happened under injury leave, examine what actually happened to determine any needed corrections to leave and salary. The following information on two possible scenarios may be helpful.

### **Employees Who Were "Made Whole"**

Any sick or annual leave used by employees for absences related to compensable work-related illnesses or injuries who were "made whole" should be restored, subject to July 1 forfeiture provisions. Restoration is made up to a maximum of 90 absences. For example, an employee who used three hours sick leave each day in conjunction with worker's compensation payments should have these sick leave hours restored for the first 90 absences. Employees who wish to have leave restored must pay the employee's share of PERA on the worker's compensation payments received from Pinnacol. The agency must also pay the employer's share of PERA on the worker's compensation payments. An employee who elects not to pay the employee's

"Instructions" continued on page 2

“Instructions” continued from page 1

share of PERA on the worker's compensation payments is not eligible for injury leave and will not have personal leave restored.

#### **Employees Who Were Placed on Leave-Without-Pay**

Employees who were charged leave-without-pay for absences related to a compensable worker's compensation injury during the first 90 days, should be paid the difference in salary between the worker's compensation payment and gross base pay. All normal PERA, Medicare, and taxes are withheld. In order to receive this difference in salary, the employee must also pay the employee's share of PERA and the state will pay the employer's share on benefits paid by Pinnacle directly to the employee. The employee's share may be deducted from any pay owed the employee for the period where unpaid leave was taken instead of injury leave. An employee is entitled to anniversary increases that would have occurred during the period of injury leave (i.e., April 2000 through June 2002). This time also counts for movement to the next higher annual leave earning rate. Employees who paid the state's share of health insurance premiums during the period of time that injury leave applies must also be reimbursed for the state's share.

- After the 90 absences of injury leave is exhausted, if the employee is still receiving worker's compensation payments, the

employee is charged sick and/or annual leave in an amount that is closest to the difference between the worker's compensation payment and the employee's gross base salary (make whole), excluding any pay differentials.

- After all accrued leave is exhausted, an appointing authority may grant leave-without-pay or consider administratively discharging the employee. Administrative discharge can only occur after FMLA protections are exhausted.

A Notice of Injury Leave Restoration and Notice of Reconsideration of Injury Leave Restoration are available at [www.colorado.gov/dpa/dhr](http://www.colorado.gov/dpa/dhr). You are strongly encouraged to use these notice forms for all employees, which provide for a 10-day election period. If two distinct injuries occurred during the time period that injury leave is being restored, it is recommended that you send separate notices for each injury.

Unusual situations should be reviewed with your respective legal representatives. Within the Colorado Attorney General's Office, contact Jill Gallett, First Assistant Attorney General, Employment and Personnel Section at 303-866-5689.

For general questions or copies of the calculation forms, contact Laurie Benallo at 303-866-4247 or Cristina Valencia at 303-866-5383.